he has reached. We confess, however, to a peculiar interest in the chapter, which deals with the effect of conscription on population and perhaps a brief reference to this chapter will serve to illustrate Mr. Takata's methods and the limited value of his conclusions.

The recent extraordinary increase in the population of Japan, presents one of the most interesting developments of our generation. Perhaps we can state the nature of this increase by means of a few figures. Careful investigations indicate quite accurately that in 1721, the population of Japan was a little over 26,000,000. In 1846, just prior to the opening of the ports and resultant contact with western civilization, the population was estimated as barely 27,000,000. Hence, it appears that for at least one hundred and twenty-five years the population of Japan remained practically stationary. Now note the change: In 1871 the population had risen to 33,000,000; in 1881 to 36,000,000; in 1891 to 40,000,000 and in 1921 to 57,000,000. What were the factors—social and economic—which retarded the growth of population during the centuries of seclusion and have so greatly accelerated it during the past fifty years of contact with the West? Over a quarter of a century ago this problem challenged the attention of Garrett Droppers, then a brilliant young teacher in Tokyo, and recently American Minister to Greece. In a paper read before the Asiatic Society of Japan he sought to explain the causes of this remarkable contrast. Among the social factors noted by Mr. Droppers conscription plays no part. Has it done so in these intervening years as the system of conscription in Japan has been enlarged and elaborated? Answering this question Mr. Takata offers a number of carefully prepared statistical tables. While obviously the results of painstaking labor, to the casual reader the statistics are inadequate and inconclusive. Evidently they produced this effect on Mr. Takata, for in summarizing the results he says: "We have seen that the system of conscription gives rise to the two contrary effects. It causes a decrease of birth rate on one hand, while it causes an increase of birth rate and decrease of death rate on the other. We cannot say definitely which of these two effects has the tendency to predominate over the other because we cannot determine the definite quantity of the latter. At any rate we can say that the effects of the system upon these several rates are not very great." This impotent conclusion we interpret to mean that statistics, however conscientiously gathered, standing alone, tell us nothing. They are at best merely a small portion of the raw material of the thinker. In this aspect Mr. Takata's volume has some value. But the story of the effects of conscription on Japan in its larger significance is still to be written.

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CONFLICT OF LAWS. By John P. Tiernan, Professor of Law, University of Notre Dame. Callaghan & Company, Chicago, 1921, pp. vi, 122.

It is to be gathered from the preface that this book is intended for use in instruction in law schools, where the case method of study is not used.

The author states that "in his presentation of this difficult subject in the class room he has produced satisfactory results only by a combination of text, cases, and lecture in proper proportion." He says "instead of merely stating the law, he has by clear, simple language explained it, so as to reproduce, as far as possible, the full value of the class instruction," and that "it is this very feature, it is believed, that will commend it for Law School purposes to instructor and class alike."

The book does not purport to cover the whole subject of Conflict of Laws, the author stating (p. 88) that only a few of the particular subjects have been selected which, because of their difficulty and their practical importance, require special attention.

The book is divided into twelve chapters, a chapter being devoted to each of the following topics—Comity, Torts, Death Actions, Contracts, Remedies, Interest and Usury, Sales and Chattel Mortgages, Marriage, Legitimacy and Adoption, Wills, Crimes and Penal Actions. There is no chapter on any of the important topics of Capacity, Domicil, Divorce, Administration of Estates, Jurisdiction, or Judgments, though some of these topics are treated incidentally in the discussion of other branches of the subject. To omit entirely such important practical topics as Divorce, Administration of Estate, and Domicil and give an entire chapter to Interest and Usury is difficult to understand. Usury and Interest can hardly be deemed more important or practical than Divorce or Administration of Estates.

The plan of the book is to state the law, in the form of definite rules, at the beginning of each chapter and to follow this with text elaborating and explaining the rules, and one or more cases illustrating the rule and text.

The book is written in a somewhat colloquial style. Such expression as "no doubt we have all studied Domestic Relations" (p. 88); "those of us who have studied contracts will recall" (p. 53) give the impression (though it may be an erroneous one) that the text is a transcript of lectures. Some of the language, too, is popular rather than technical, as where the author in dealing with actions for wrongful death speaks of them as "death actions." In this connection it may be noted that the author confuses the action to recover damages for the tort with the tort itself. He says (p. 13), "A death action is a tort" and (p. 16) "a death action, though statutory, in origin, is also transitory, and can be enforced in any state under the general rules of Comity, applicable to such actions." He says (p. 16): "So far, the substance of our discussion of death actions is, that they arise in the state where the injury is inflicted; that they are statutory torts; and that being actions to recover a personal judgment, are transitory," etc.

Exception must be taken to some of the statements of law made by the author. If, as he thinks, a contract is to be governed by that law with reference to which the parties contracted, it seems erroneous to state as he does in the black letter text (p. 21) that the general rule is that the law of the place where the contract was made is the governing law, and then to state as an exception to this general rule that if the contract is to be performed in a place other than the place of making that the law of the place of performance is to govern. In the body of the text, he says (p. 30),

"there is no difficulty in defending either the rule or the exception, because, as has been said, the *applicatory law* is the law with reference to which the parties contracted." If that is the applicatory law it should be stated as the *rule*, the place of making or performance merely affording evidence that the parties intended the law of the one place or the other to apply. Of course it would follow, also, that if the applicatory law is the law with reference to which the parties contracted, that they might have intended the law of a third state to apply, in which case neither the law of the state in which the contract was made—the stated rule—or the law of the state in which the contract was to be performed—the stated exception—would apply.

On page 21, in the black letter text, he states "a contract void where made, or to be expressly performed, is not enforcible in another state" and again on page 43, in closing the discussion of contracts, he states, "a contract void where it is made or is to be performed, is void in all states." Nine cases are cited as authority for this statement. None of these cases support the text, and it is believed the statements do not express the law. The books are full of cases of contracts held to be valid which were void in the state in which they were made, and of contracts held to be valid which were void in the state in which they were to be performed. So the statement (p. 43) that the author says is the converse of the above statement that "if a contract is valid where it is made or is to be performed, it is valid in all states," is denied by many cases. Indeed, it is inconsistent with the author's statement on page 30, that the applicatory law is, not the law of the place where the contract is made or is to be performed, but the law with reference to which the parties made their contract. So the author's statement (p. 68), "a sale is made in that state where the property is delivered" is not in accord with principles of the law of sales.

The author lays down the rule (p. 27) that discharge of a contract is governed by the law of the state in which the contract was made. The only case he cites in support of his proposition is Graham v. Bank, 84 N. Y. 393. In discussing this case, he quotes from the language of the court as follows: "In the present case, the contract was made in Virginia *and* to be *performed there.* The dividends were there *declared* and *payable.* They were paid to the husband who could lawfully receive and appropriate them, by the law of Virginia to his own use and benefit. The payment was therefore valid and effectual and discharged the bank from liability. Minor cites this case for the rule that discharge of a contract by performance is governed by the law of the place of *performance.* (Minor, Conflict of Laws, 465) and Beale cites it for the rule that questions of performance depend upon the law of the place of performance (Beale, Sum. Sec. 96).

It is said on page 95: "as regards realty, all questions in Wills that pertain to it, such as validity, or revocation or construction are governed by the law of the location. There is no exception to this general rule." Mr. Beale says (2 Beale's Cases on Conflict of Laws, p. 286 n.): "A will of personal property is to be interpreted, in the absence of strong evidence of a contrary intention, according to the law of the domicil. The same rule is generally followed in interpreting a devise of real estate." Minor says (p.

341), "A few cases may be found holding that the interpretation of the devise must depend upon the *lex situs*. But here too the weight of reason and authority is in favor of the rule that the interpretation of the devise is to be governed by the law or usage with which the testator is supposed to be most familiar, namely that of his domicil. Story, (Conflict of Laws, 8 ed. 671) also says the law of the domicil applies.

It is stated in the chapter on Legitimacy and Adoption (p. 88) that "the law of the state where the infant is domiciled determines validity of legitimacy or adoption." This is not a correct statement of the law. It is generally agreed that legitimacy is determined not by the infant's domicil but by the domicil of the father. The principle on which the author states that the domicil of an infant determines the validity (sic.) of legitimacy is that the domicil of an infant is that of his father (p. 89). But, of course, this is not true of illegitimate children.

A grave fault in the book is the idea it conveys to the uninitiated student for whom it is apparently intended, that the law of Conflict of Laws is simple, clear and well settled, whereas no topic of the law is more subtle, complicated and subject to difference of opinion.

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INSANITY AND MENTAL DEFICIENCY IN RELATION TO LEGAL RESPONSIBILITY. By William G. H. Cook, LL. D. (Lond.) With a foreword by Sir John Macdonell, K. C. B., M. A., LL. D., F. B. A., and a preface by Sir Robert Armstrong-Jones, M. D., F. R. C. P., D. Sc., C. B. E., J. P., D. L., F. S. A. London: George Routledge & Sons, Limited. New York: E. P. Dutton & Co., 1921, pp. xxiv, 192.

The object and scope of this book, which is a thesis approved for the degree of Doctor of Laws in the University of London, are indicated by the title. As the author points out in his introduction, the problems of insanity and mental deficiency have been generally considered in their relation to the criminal law. There is consequently room for such a book as this purports to be. Although the greater portion of the text is devoted to a discussion of the English cases, the author makes frequent references to the law of other countries as well as the British colonies.

In Chapter I the various forms of mental disorder and defect are defined and classified. In Chapter II responsibility for tort is discussed, the *dictum* of Lord Esher in Hanbury v. Hanbury (8 T. L. R. 559 C. A.) that responsibility exists "provided the disease of the mind of the person doing the act be not so great as to make him unable to understand the nature and consequence of the act which he was doing" being accepted as a correct statement of the English law. Chapter III deals with capacity to contract. The author recognizes the decision of the Court of Appeal in The Imperial Loan Company, Limited, v. Stone (1892, 1 Q. B. D. 599), which permits insanity to be set up as a defense to an action for breach of contract only